FILED
United States Court of Appeals
Tenth Circuit

October 22, 2008

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

    Plaintiff - Appellee,

v.

ROY GILBERT KUBICK,

    Defendant - Appellant.

No. 08-3286
(D.C. No. 5:07-CR-40068-JAR-4)
(D. of Kansas)

ORDER

Before **TACHA, MURPHY**, and **HARTZ**, Circuit Judges.

Defendant Roy Gilbert Kubick appeals the district court's judgment of conviction and sentence. Because the notice of appeal was filed untimely, we dismiss the appeal.

In a criminal case, a notice of appeal must be filed within 10 days after entry of the judgment. Fed. R. App. P. 4(b)(1)(A)(i). The district court may grant an extension of time up to 30 days after the original 10-day period expires. Id. 4(b)(4).

Here, the district court's judgment was entered January 15, 2008. The notice of appeal should have been filed by January 30, 2008. No motion for extension of time was filed. The notice of appeal was not filed until October 8, 2008, more than eight months after the 10-day deadline to file the notice of appeal passed. See Fed. R. App. P.

4(b)(1)(A).

The timeliness requirement of Rule 4(b)(1)(A) is an inflexible claim processing rule. U.S. v. Garduño, 506 F.3d 1287, 1290-91 (10th Cir. 2007). Because the notice of appeal in this case was filed inordinately late, this court may raise Rule 4(b)'s time limitation *sua sponte*. U.S. v. Mitchell, 518 F.3d 740, 750 (10th Cir. 2008).

If the defendant is considering a claim for ineffective assistance of counsel for failing to file a timely notice of appeal, he should consider using the proceedings described in 28 U.S.C. § 2255. The defendant should note the time limitation applicable to such proceedings described in the statute.

APPEAL DISMISSED.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

Lara Smith

by: Lara Smith
       Counsel to the Clerk